the present time. Therefore the offerings in each school are based on what the students want in the school.'" (Petitioners' Brief at pages 42a-44a, 345 F.2d at pp. 123-4).

So, again this question raised by the petitioners here resolves itself into a predetermined question of fact.

C. The lower court's decision is not in conflict with the text of the Civil Rights Act of 1964 or the regulations for its administration.

It is urged by petitioners that this court should take jurisdiction of this case on the basis that petitioners believe that the Court of Appeals' decision frustrates enforcement of school desegregation as required by the Civil Rights Act of 1964 (42 U.S.C.A. Sec. 2000d).

We fail to see the adequacy and force of any argument that can be made on this score. Actually petitioners answer their own argument when they admit that the regulations under which the Civil Rights Act of 1964 are administered provide that:

> "* * * school boards are eligible for financial assistance if they are subject to a final court order of desegregation." (Petitioners' Brief at page 22).

So long as this is a regulation then it would appear that it is enforceable as a part of the body of the administrative law of the Civil Rights Act of 1964.

II.

The Question of the Assignment of Teachers Without Regard to Race Has Not Been Finally Litigated in This Case.

We refer to the language of the Court of Appeals on the question of the disposition of the issue of the desegregation of the teachers. It was recognized by the District

Court in the first instance and by the Court of Appeals that the desegregation of teachers is recognized as a part of the over-all desegregating process and that courts have been ordering districts to undertake teachers' integration as a part of the total job of desegregating the schools. Respondents do not take issue with this pronouncement; they readily agree and have always agreed that in order to fairly and completely integrate the school system and to thus bring to full fruition the purpose and intent of the decisions that the teachers must be employed without regard to race or color. Respondents recognize and have recognized that it would be a discrimination against the pupils who have been integrated to deny them the right to challenge faculty segregation.

The District Court considered this question but reserved it as a question that might become material and require consideration in a proper situation.

The Court of Appeals sanctioned and approved the District Court's action in retaining jurisdiction of this question until such time as the matter was litigated by students who are attending integrated classes, reached in the orderly progress of the plan of integration. None such were parties in this case.

The Court of Appeals states:

> "Seemingly, the Court was of the view that appellants were prematurely attacking the assignment of teachers for the reason that Patricia Rogers and others of her class are high school students who are attending grades not yet reached in the orderly progress of the plan of integration. We are in accord. Certainly if there is in fact discrimination being practiced in teacher selection, pupils who are directly affected thereby, or the teachers themselves should be willing to intervene and seek a judicial determination of the question.

"Moreover, in view of the good faith efforts of the Board and other school authorities to bring about complete integration, we are persuaded to hold that they should be afforded the initial opportunity of correcting the practice of employing teachers on a proscribed discriminatory basis, if in fact that practice prevails. If the Board and other school authorities fail or refuse to recognize and discharge their responsibility in this regard, we are confident that the trial court on motion or application of proper parties will accord the question prompt and effective consideration and will enter such order as the facts and circumstances justify and require." (Petitioners' Brief, page 46a; 345 F.2d 125).

We know of no decision, and our attention is not directed to any decision by petitioners, that takes issue with this position.

CONCLUSION

It is the position of the respondents that there are no unique questions of law which are raised by this record and remain undecided, nor any conflicts with prior decisions of this Court, nor decisions of Courts of Appeal of other Circuits upon similar facts, and for the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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